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11 Attorneys for Plaintiff
FACEBOOK, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION
15

16 FACEBOOK, INC.,

17 Plaintiff,

18 v.
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20 POWER VENTURES, INC. a Cayman Island
corporation, STEVE VACHANI, an individual;
DOE 1, d/b/a POWER.COM, DOES 2-25,
21 inclusive,

22 Defendants.
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Case No. 5:08-cv-05780-LHK

**DECLARATION OF JOSEPH CUTLER IN
SUPPORT OF FACEBOOK'S
SUPPLEMENTAL REMEDIES BRIEF**

Dept: Courtroom 8, 4th Floor
Judge: Hon. Judge Lucy H. Koh

1 I, Joseph Cutler, declare as follows:

2 1. I make this declaration in support of Facebook, Inc.'s Supplemental Remedies
3 Brief. I have personal knowledge of the matters stated herein.

4 2. I am a partner at the Seattle, Washington office of the law firm Perkins Coie LLP.
5 I am a member of the firm's litigation group. In 2008, I was engaged by Facebook, Inc,
6 ("Facebook") to assist it with combatting illegal users of Facebook. I previously prepared and
7 executed the Declaration of Joseph Cutler in Support of Facebook, Inc.'s Motion for Partial
8 Summary Judgment for Liability under the CAN-SPAM Act (Dkt. No. 214-8).

9 3. As I noted in my earlier Declaration, on or about December 1, 2008, I was advised
10 that Facebook had determined that a third party website hosted by Canadian web-hosting service
11 iWeb technologies at the IP address 70.38.96.7, and associated with a commercial website
12 operating at the URL <http://www.power.com> ("Power's website"), was, in violation of
13 Facebook's Terms of Use.

14 4. Specifically, I became aware on or after December 1, 2008 that the Power website
15 solicited Facebook users' usernames and passwords, and then, using an automated scripting
16 routine, logged into the users' Facebook accounts to "crawl" and "scrape" the Facebook website
17 in order to obtain and download a large amount of Facebook user information. I also became
18 aware on or after December 1, 2008 that the Power website, without Facebook's permission, was
19 displaying Facebook user data and Facebook's trademarked logo on the Power website. The
20 Power website was effectively "proxying" Facebook.

21 5. On December 1, 2008, I prepared a Cease and Desist letter, which I sent via email
22 to the apparent owners of the Power website advising them that their service breached several of
23 Facebook's Terms of Use.

24 6. I spent [REDACTED] hours addressing Power's actions on December 1, 2008. My hourly
25 rate at the time was approximately [REDACTED] per hour. As a result, the total billable time spent on
26 December 1 was worth \$852.50. No other attorney or staff at Perkins Coie billed Facebook for
27 time performing activities associated with the Power matter on December 1, 2008.
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_____ following up on the demand letter sent three days before, which included a telephone call with defendant Steven Vachani discussing the cease and desist letter that I had emailed on December 1, 2008. Thereafter, Perkins Coie billed time on this matter through March 2009.

8. Beginning with the December 4, 2008 discussion I had with Mr. Vachani, and at all times thereafter, I reiterated to Mr. Vachani that, as stated in the Cease and Desist letter, Facebook would not, and did not, authorize Power.com to continue to connect to the Facebook website, and that all activities directed by the Power.com website in connecting to the Facebook needed to cease immediately. Mr. Vachani and Power.com refused to abide that instruction, resulting in Facebook filing the underlying Complaint in this lawsuit on December 29, 2008.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This Declaration is executed on this 7th day of March, 2017, at Seattle, Washington.

_____ Joe Cutler _____